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15 *Counsel for Plaintiffs*

16 **UNITED STATES DISTRICT COURT**
17 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
18 **OAKLAND DIVISION**

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CAROLYN JEWEL, TASH HEPTING,
YOUNG BOON HICKS, as executrix of the
estate of GREGORY HICKS, ERIK KNUTZEN
and JOICE WALTON, on behalf of themselves
and all others similarly situated,

Plaintiffs,

v.

NATIONAL SECURITY AGENCY, *et al.*,

Defendants.

Case No.: 4:08-cv-4373-JSW

**PLAINTIFFS' OPPOSITION TO
DEFENDANTS' ADMINISTRATIVE
MOTION TO ENLARGE PAGE LIMIT
AND ADMINISTRATIVE MOTION TO
STRIKE CROSS-MOTION**

Courtroom 5, 2nd Floor
The Honorable Jeffrey S. White

1 Plaintiffs oppose the Government Defendants' after-the-fact request to enlarge the page
2 limit to oppose Plaintiff's Motion for Partial Summary Judgment. Plaintiffs also request that the
3 Court strike Defendants' improper cross-motion, which raises no new issues for decision by this
4 Court and instead serves only as a vehicle for the Government Defendants to disrupt and delay the
5 agreed-upon schedule for briefing and hearing on Plaintiffs' motion for partial summary judgment.

6 Plaintiffs filed their motion for partial summary judgment on July 25, 2014 and negotiated a
7 schedule with Defendants at that time. As this Court is aware, a week before the original
8 September 19 due date for Defendants' opposition, Defendants sought an extension of the briefing
9 schedule. Defendants did not ask for any enlargement of the page limits or suggest that they would
10 be seeking an enlargement in the future. The Court granted a partial extension, setting
11 September 26 as the due date for the Government's opposition to Plaintiffs' motion. Defendants
12 then requested a further extension of the due date to September 29, which plaintiffs did not oppose
13 and which the Court granted. As a result of these extensions, defendants gained ten extra days to
14 prepare their opposition and Plaintiffs' time to prepare its reply was reduced by ten days, a result
15 Plaintiffs did not object to because they did not believe a cross-motion would be filed (or could be
16 filed based upon the time limits).

17 On the day their opposition is due, defendants have now filed an administrative motion
18 seeking two forms of relief: 1) Leave to file an opposition brief of 45 pages (Plaintiffs' brief was
19 25 pages) and 2) (Implicit) leave to file an untimely and unwarranted cross-motion.

20 As to the page limits, Plaintiffs worked diligently to keep their brief within the 25-page limit
21 of the local rules, and believe that Defendants could have done the same. Moreover, Defendants
22 obviously knew that they would need 20 additional pages when they sought the two extensions of
23 time earlier this month and in any event certainly knew of this need before 1:00 a.m. this morning,
24 when they first sent an email to Plaintiffs' counsel seeking consent.

25 As to the cross-motion, it is untimely and unwarranted, and should be struck. The 35-day
26 limit for filing a cross-motion in advance of the October 31, 2014 hearing set for Plaintiffs' motion
27 ran on Friday, September 26, 2014. Because Defendants failed to file their purported cross-motion
28 in time for it to be briefed and heard on the same time schedule as Plaintiffs' motion, it is not a true

1 cross-motion. Defendants implicitly recognize this by belatedly (at 1:00 p.m. today) noticing a
2 cross-motion for December 5, 2014, a date on which they had notice that Plaintiffs' counsel Cindy
3 Cohn is unavailable. ECF No. 280 at 4:8-9 ("Cindy Cohn is unavailable with pre-paid and pre-
4 scheduled travel out of the country from November 17 until December 10.").

5 The Court properly rejected Defendants' first attempt to try to upend the schedule and
6 process for Plaintiffs' motion for partial summary judgment, and this latest attempt to shoehorn in
7 a cross-motion is nothing more than an attempt to get through the back door what the Court refused
8 to let in through the front.

9 Moreover, Defendants' so-called "cross-motion" on first review does not appear to raise any
10 issues beyond the scope of plaintiffs' motion and is unnecessary at this juncture. Indeed, it is not
11 separate from the Opposition in any material respect and so does not really appear to be an
12 independent motion at all. As Plaintiffs noted in their Opposition to the Government Administrative
13 Motion to Extend Time (ECF No. 280), judicial economy will not be served by allowing the
14 government a cross-motion at this point, since if Plaintiffs' motion is granted the cross-motion will
15 be moot and if Plaintiffs' motion is denied, the government can then bring a motion, if appropriate
16 in light of the Court's reasoning.

17 Instead, Defendants' cross-motion principally appears to be a device to give Defendants an
18 unauthorized surreply to Plaintiffs' reply, and to cause the Court to vacate the October 31 hearing
19 date in favor of delaying the hearing further into the future.

20 Defendants' motion for additional pages should be denied and Defendants cross-motion
21 should be struck. Defendants should be instructed to negotiate with Plaintiffs for a reasonable
22 briefing schedule and hearing date for any dispositive motion they wish to bring and to file an
23 amended Opposition to Plaintiffs Motion for Partial Summary Judgment by 9:00 a.m. Pacific time
24 tomorrow no longer than 25 pages and removing their request for a cross motion.

25 Dated: September 29, 2014

Respectfully submitted,

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/s/ Cindy Cohn

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LEE TIEN
28 KURT OPSAHL

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Defendants.

Case No.: 4:08-cv-4373-JSW

**[PROPOSED] ORDER DENYING
GOVERNMENT DEFENDANTS'
ADMINISTRATIVE MOTION FOR
EXCESS PAGES AND STRIKING
DEFENDANTS' CROSS-MOTION FOR
SUMMARY JUDGMENT**

Courtroom 5, 2nd Floor
The Honorable Jeffrey S. White

[PROPOSED] ORDER

1
2 Upon consideration of the Government Defendants' Administrative Motion for an
3 Enlargement of the Page Limit to Oppose Plaintiffs' Motion for Partial Summary Judgment, and
4 Plaintiffs' response thereto, **IT IS HEREBY ORDERED** that:

5 1) the Government Defendants' motion is **DENIED** and

6 2) the Government Defendants' combined Opposition and Cross-Motion for Summary
7 Judgment is **ORDERED** struck from the record.

8 3) Defendants are further **ORDERED** to file a separate Opposition of no more than 25
9 pages without a cross motion by no later than 9am Pacific time, Tuesday September 30, and,

10 4) if Defendants wish to file a dispositive motion, they are instructed to meet and confer
11 with Plaintiffs regarding a briefing schedule and hearing date for such motion.

12
13 **IT IS SO ORDERED.**

14 Dated: _____

15 _____
16 HON. JEFFREY S. WHITE
17 UNITED STATES DISTRICT COURT JUDGE